

AB# 20350

45761-26
41022-04

INTERAGENCY AGREEMENT

BETWEEN THE

**NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES**

CFS

OCT 29 2009

AND THE

POLICY UNIT

**NEBRASKA ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF DISPUTE RESOLUTION**

This agreement is entered into by and between the Nebraska Department of Health and Human Services, Division of Children and Family Services (hereinafter "DHHS"), and the Nebraska Administrative Office of the Courts, Office of Dispute Resolution (hereinafter "AOC/ODR").

PURPOSE: DHHS is desirous of entering into an agreement for the provision of **FACILITATED PRE-HEARING CONFERENCES** for the families of the State of Nebraska.

I. TERM AND TERMINATION

- A. **TERM.** This agreement is in effect from July 1, 2009 until June 30, 2011.
- B. **TERMINATION.** This agreement may be terminated at any time upon mutual written consent or by either party for any reason upon submission of written notice to the other party at least 30 (Thirty) days prior to the effective date of termination.

II. CONSIDERATION

- A. DHHS agrees to pay the Contractor **\$115,000.00** per year for each of the two fiscal years of 2009-2010 and 2010-2011, for a total of **\$230,000.00** for the provision of facilitated Pre-Hearing Conferences. Payment shall be made according to the following schedule: a payment of **\$60,000.00** (includes an annual fee of \$5,000.00 for administrative functions in furtherance of the agreement performed by AOC/ODR) upon signing of the agreement. Payments of **\$27,500.00** shall be made on or about January 1, 2010, April 1, 2010, October 1, 2010, January 1, 2011 and April 1, 2011 and a payment of **\$32,500.00** shall be made on or about July 1, 2011. All payments are contingent upon submission of billings from the AOC/ODR to DHHS. This amount represents annually a minimum of 550 prehearing facilitations.

DHHS and AOC/ODR understand and agree that this Agreement does not guarantee that referrals requesting such services will be made by either the DHHS or the courts, and no minimum number of referrals for services from the DHHS or the courts shall be expected. However, both parties agree to encourage referrals of Pre-Hearing Conferences. Referrals will typically be in relation to scheduled formal child welfare court hearings for the individual child and family.

III. SCOPE OF AGREEMENT

A. AOC/ODR agrees to provide Pre-hearing Conferences by and through its subcontractors as described below for families of children who have had child welfare petitions filed against them or who are state wards, upon referral by DHHS, by a provider contracted with DHHS to provide case management services for such children, or by a local juvenile or county court.

B. Program Standards:

1. Pre-Hearing Conferences: AOC/ODR through its subcontractors will facilitate pre-hearing conferences for initial child welfare removal proceedings and may facilitate other conferences prior to subsequent hearings in the child welfare case. The named subcontractors will facilitate pre-hearing conferences using the Pre-Hearing Conference Protocol as approved by the *Through the Eyes of the Child Initiative* Protocol Development Committee as a guide (Attachment A).
2. Definition of Pre-Hearing Conference: The Pre-Hearing Conference is defined as an informal, facilitated meeting prior to a formal court appearance and held to gain the cooperation of the parties, to gather certain information, to offer services and/or treatment, and to develop a problem-solving atmosphere in the best interest of the child(ren) involved in the juvenile court system. Elements of a Pre-Hearing Conference generally include:
 - a) A duration of between 30 and 60 minutes;
 - b) Required participants consisting of a parent/custodial stepparent/legal guardian or other custodian; attorneys for the participants; guardian ad litem; county attorney; DHHS or Out-of-Home Provider case worker;
 - c) A trained, proficient child welfare facilitator;
 - d) Use of the Pre-Hearing Conference Protocol, attached.

Pre-Hearing Conferences do not generally include:

- a) Screening, preparation or interviewing of parties by the facilitator prior to the Pre-Hearing Conference;
- b) Scheduling or case management of the Pre-Hearing Conference
- c) Drafting and submittal of written reports to the court or parties by the facilitators, other than contemporaneous notes at the time of the conference;

d) Follow up meetings or contacts by the facilitator.

C. Service Standard/Safety Standards:

- a) AOC/ODR shall ensure the safety of any family member involved in the scope of services by incorporating standards and protocols to intervene and redirect in relevant situations within its subcontracts with the named subcontractors.
- b) AOC/ODR shall that suspected abuse and neglect concerns are reported to the DHHS Hotline (1-800-652-1999), by incorporating this requirement in its subcontracts with the named subcontractors.

D. Administrative Standards: AOC/ODR recognizes and affirms that, when applicable, DHHS retains legal custody of youth involved in their program and has the final authority in all decisions.

1. Performance Accountability: AOC/ODR through its agreements with the named subcontractors agrees to be held accountable for the services provided, and shall endeavor to meet the outcomes defined below for Pre-Hearing Conferences:

- a) Outcome: The continuity of family relationships and connections is preserved for children.
 - (1) 80% of Pre-Hearing Conference cases will result in having legal parents identified during the Pre-Hearing Conference.
 - (2) 97% of children involved (directly or indirectly) in the pre-hearing conference will have a determination made as to whether there may be a potential tribal affiliation and steps to identify status defined.
 - (3) 75% of children will have at least one family member or other responsible adult known to the child identified that could be pursued to provide out of home placement, if needed.
 - (4) 90% of children placed outside of the parental home will have visitation scheduled between the parent and the child by the end of the Pre-Hearing Conference.
 - (5) 75% of children placed outside of the parental home and not placed with siblings have visitation scheduled between siblings by the end of the Pre-Hearing Conference.
- b) Outcome: At least one parent or guardian of the child will be present at the Pre-Hearing Conference and have an opportunity to engage in dialogue about the child's needs and provide input into decisions regarding the child in the Pre-Hearing Conference
 - (1) 97% of pre-hearing conference cases will include at least one parent or guardian of the child.
 - (2) 97% of the parent(s) or guardians participating in the Pre-Hearing Conferences will have participated in dialogue about their child.
 - (3) 90% of the parent(s) or guardians participating in the Pre-Hearing Conferences will have provided input into decisions

- regarding the case.
2. Required Accountability Report: AOC/ODR shall submit quarterly reports to Magellan on or before October 31, 2009, January 31, 2010, April 30, 2010, July 31, 2010 and subsequent quarters in 2010-2011 that include the data elements required in Article III.C.1. Should AOC/ODR be more than thirty (30) days delinquent in submitting the Performance Measures Report, AOC/ODR may be required to pay DHHS 10% of the previous quarter's total receipts.
 3. Staff Standards:
 - a) Staff Qualifications: AOC/ODR will require in its subcontracts with the named subcontractors that Pre-Hearing Conference facilitators will all be staff of, or affiliated with an Office of Dispute Resolution-approved Mediation Centers.
 - 1) Staff Training: All facilitators with direct contact with families will have a minimum of thirty (30) hours of mediation training, eight (8) hours of child welfare facilitation training and eight (8) hours of ongoing education per year on topics related to child abuse and neglect, juvenile justice, crisis management, cultural competency, role of the team, engaging families and plan development. Safety protocols to ensure safety of family members involved at Pre-Hearing Conferences will be required in the education and training.
 - 2) Staff Equivalency Determination Process:
 - (a) AOC/ODR may petition DHHS, in writing, for a determination of Equivalent Qualifications and Standards regarding a potential employee who does not meet the qualifications and standard set forth in section 1) above. The petition for Equivalent qualifications and Standards determination shall contain:
 - (1) The name of the potential employee who is the subject of the petition;
 - (2) A reference to this Agreements employment qualifications and standards to be reviewed;
 - (3) A statement from AOC/ODR which sets forth its basis for believing that the potential employee meets this Agreements employment qualifications and standards; and
 - (4) Supporting documentation for how the potential employee meets the employment qualifications and standards.
 - 3) Pre-Hearing Conference Protocols: All facilitators will abide by the Pre-Hearing Conference Protocols, which includes addressing safety concerns for participants, including family members. The Protocols are included by reference to this document and are found as Attachment A.
 - 4) Subcontractors: DHHS and AOC/ODR agree that facilitation of Pre-Hearing Conferences will be performed by subcontractors of AOC/ODR, namely one or more of the six ODR-approved mediation centers its staff or approved affiliates. The six AOC/ODR approved mediation centers are Center for Conflict Resolution,

Central Mediation Center, Concord Center, The Mediation Center, Nebraska Justice Center, and The Resolution Center. AOC/ODR will incorporate provisions of this Agreement into its subcontracts.

V. GENERAL PROVISIONS

- A. **AMENDMENT.** This Agreement may be modified only by written amendment, duly executed by both parties. No alteration or variation of the terms and conditions of this agreement shall be valid unless made in writing and signed by the parties hereto. Every amendment shall specify the date on which its provisions shall be effective.
- B. **ASSIGNMENT.** The Parties agree not to assign or transfer any interest, rights, or duties under this agreement to any person, firm, or corporation without prior written consent of the other Party. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this agreement.
- C. **COST PRINCIPLES AND AUDIT REQUIREMENTS.** The AOC/ODR is to follow the applicable cost principles set forth in OMB Circular A-87 for State, Local and Indian Tribe Governments or A-122 for Non-Profit Organizations. Audit requirements are dependent on the total amount of federal funds received by AOC/ODR. See the table below and Attachment 1, Audit Requirement Certification form. Audits must be prepared and issued by an independent certified public accountant licensed to practice. A copy of the annual financial review or audit is to be made electronically available or sent to: Nebraska Department of Health and Human Services, Financial Services, P.O. Box 95026, Lincoln, NE 68509-5026.

Amount of annual federal payments	Audit Type
Less than \$500,000	Audit that meets Government Auditing Standards
500,000 or more in federal payments	A-133 audit

D. **BREACH OF AGREEMENT.**

1. Should either party breach this agreement, the non-breaching party may, at its discretion, exercised in good faith, suspend performance under this agreement immediately upon written notice. Should a party exercise its right to suspend performance as set forth herein, the other party shall be afforded a reasonable opportunity, not to exceed 30 days, to cure or otherwise resolve the breach. If the breach is not cured within the timeframe specified, the non-breaching party, may terminate the agreement immediately.

2. The waiver by a party of a breach of this agreement by the other party, shall not operate or be construed as a waiver of any subsequent breach. No waiver shall be valid unless in writing and signed by the party.

- E. CONFIDENTIALITY. The Parties agree that any and all information gathered in the performance of this agreement, either independently or through a party, shall be held in the strictest confidence and shall be released to no one other than the Parties without the prior written authorization of DHHS unless otherwise expressly required by law, provided, that contrary agreement provisions set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision. This provision shall survive termination of this agreement.
- F. CONFLICTS OF INTEREST. In the performance of this Agreement, the Parties agree to avoid all conflicts of interest and all appearances of conflicts of interest. Each party will notify the other party of any such instances encountered in the course of its work that other arrangements can be made to complete the work.
- G. COMPLIANCE WITH LAW. In carrying-out this Agreement, the Parties agree to comply with Title IV-D of the Social Security Act, the Code of Federal Regulations governing the Child Support Enforcement Program, other applicable federal regulations and requirements, and applicable state laws.
- H. DATA OWNERSHIP. Data shall remain the property of source party. The parties may not release the data to anyone without the prior written authorization of the owning party, with the exception that AOC/ODR and its subcontracts may use the non-personally identifiable data to report outcomes of work pursuant to this agreement. Failure to obtain said authorization shall be considered a material breach of the Agreement.
- I. DOCUMENTS INCORPORATED BY REFERENCE. All references in this Agreement to laws, rules, regulations, guidelines, directives, policies, and attachments which set forth standards and procedures to be followed by the Parties in discharging its obligations under this agreement shall be deemed incorporated by reference and made a part of this agreement with the same force and effect as if set forth in full text, herein.
- J. DRUG-FREE WORKPLACE. The Parties hereby assure that each will operate a drug-free workplace in accordance with State guidelines and has implemented a drug-free workplace policy, which is available on request.
- K. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this agreement due to a natural disaster, or other similar event outside the control

and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of this agreement. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this agreement which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a "Force Majeure Event" and will not suspend performance requirements under this Agreement.

L. HOLD HARMLESS.

Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.

M. INDEPENDENT AGENCIES. The Parties are separate State agencies within the State of Nebraska. As an independent agencies, each shall employ and direct such personnel as it requires to perform its obligations under this agreement, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this agreement.

N. INTEGRATION. This written agreement represents the entire Agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this agreement.

O. NEBRASKA TECHNOLOGY ACCESS STANDARDS. The Parties agree to ensure compliance with current Nebraska Access Technology Standards. The intent is to ensure that all newly procured information technology equipment; software and services can accommodate individuals with disabilities. Information technology products, systems, and services including data, voice, and video technologies, as well as information dissemination methods will comply with the Nebraska Technology Access Standards. A complete listing of these standards can be found at website <http://www.nltc.state.ne.us/standards/accessibility/tacfinal.html>.

P. NON-DISCRIMINATION. The parties agree to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; the Americans With Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, as amended, in that there shall be no discrimination against any employee who is employed in the performance of this agreement, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex or marital status. This provision shall include,

but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The parties agree that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the party.

Q. SEVERABILITY. If any term or condition of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

NOTICES. Notices shall be in writing and shall be effective upon receipt. Written notices, including all reports and other written communications required by this Agreement shall be sent to the following addresses:

FOR DHHS:

Sherri Haber
DCFS – CFS Policy Section
PO Box 95044
Lincoln, NE 68509-5044
402 471-7989

FOR AOC/ODR

Janice Walker
State Court Administrator
P.O. Box 98910
Lincoln NE 68509-8910
402 471-3730

IN WITNESS THEREOF, the parties have duly executed this agreement hereto, and each party acknowledges the receipt of a duly executed copy of this agreement with original signatures.

FOR DHHS:


Signature

Todd L. Reckling, Director
Children and Family Services
PO Box 95026
Lincoln, NE 68509-5026

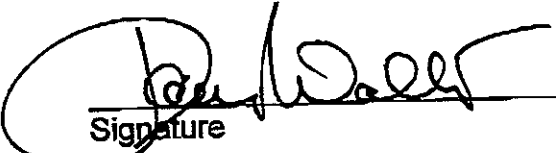
DATE: 09/17/2009


Signature

Kerry T. Winterer, Chief Executive Officer
Department of Health and Human Services
PO Box 95026
Lincoln, NE 68509-5026

DATE: 9/17/09

FOR AOC/ODR


Signature

Janice K. Walker, Administrator
Rm. 1213, St. Capitol Building
Lincoln, NE 68509

DATE: 9.23.09

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES AUDIT REQUIREMENT CERTIFICATION

Subgrantees and certain contractors receiving funds from the Nebraska Department of Health and Human Services are required to complete this document. Reference to the Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, in this document is "Circular A-133".

Grant Name: Promoting Safe and Stable Families Grant #: G-0801NEFPSS CFDA
#:93-556

Name _____

Address: _____

City: _____ State: _____ Zip Code: _____

Federal Tax Identification Number (FTIN): 47-0491233

Fiscal Year _____, 20____ to _____, 20____

All written communications from the Certified Public Accountant (CPA) engaged under #1 or #2 below, given to the contractor including those in compliance with or related to Statement of Auditing Standards (SAS) 112 *Communicating Internal Control related Matters Identified in an Audit* and SAS 114 *The Auditor's Communication with Those Charged With Governance* must be provided by the contractor to the Nebraska Department of Health and Human Services immediately upon receipt, unless the contractor has directed the CPA to provide the copy directly to the Department and has verified this has occurred.

Check either 1 or 2 and complete the signature block on page 2:

1. _____ As the party named above, we expect to expend less than \$500,000 from all Federal Financial Assistance sources, not just the grant named above, and including commodities in our current fiscal year. Therefore, we are not subject to the audit requirements of Circular A-133.

We are, however, responsible for engaging a licensed Certified Public Accountant (CPA) to conduct and prepare either, a review (expenditures less than \$75,000) or audit report (expenditures \$75,000-\$499,999) of our organization's financial statements and a report issued by the CPA. We acknowledge the audit must be completed no later than nine months after the end of our organization's current fiscal year. A copy of the report must be submitted to the Nebraska Department of Health and Human Services address

as shown below within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period.

2. X As the party named above, we expect to expend \$500,000 or more from all Federal Financial Assistance sources, not just the grant named above, and including commodities in our current fiscal year. Therefore we are subject to the single audit requirements of Circular A-133.

As a branch of the State of Nebraska, the Administrative Office of the Courts/Office of Dispute Resolution affirms that the requirements listed below are fulfilled and governed by the Statewide Single Audit as conducted by the Auditor of Public Accounts.

We will engage a licensed Certified Public Accountant to conduct and prepare the audit of our organization's financial statements and components of the single audit pertaining to those financial statements. We acknowledge the audit must be completed no later than nine months after the end of our current fiscal year.

We further acknowledge, as the contractor, that a single audit performed in accordance with Circular A-133 must be submitted to the Federal Audit Clearinghouse. The reporting package, as evidence the audit was completed must contain:

- The contractor's financial statements,
- a schedule of Expenditure of Federal Awards,
- a Summary Schedule of Prior Audit Findings (if applicable),
- a corrective action plan (if applicable) and
- the auditor's report(s) which includes an opinion on this contractor's financial statements and Schedule of Expenditures of Federal Awards, a report on this contractor's internal control, a report on this contractor's compliance and a Schedule of Findings and Questioned Costs.

We further acknowledge the auditor and this party must complete and submit with the reporting package a *Data Collection Form for Reporting on Audits of States, Local Governments and Non-Profit Organizations (SF-SAC)*.

We further acknowledge a copy of this subgrantee's financial statements, auditor's report and SF-SAC must be submitted, at the time these documents are submitted to the Federal Audit Clearinghouse, to the:

Nebraska Department of Health and Human Services
Financial Services
Grants and Cost Management
P.O. Box 95026
Lincoln, NE 68509-5026

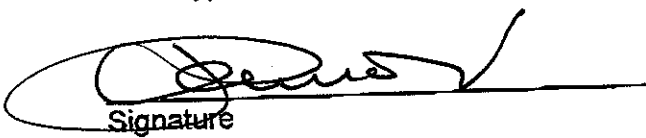
or the party must notify the Department when the reporting package becomes available and provide the Department with access to an electronic version of its annual audit and financial report. Notification of availability will be sent to the Nebraska Department of Health and Human Services, Financial Services, Grant and Cost Management is a format similar to the following:

The foregoing submissions or notification and electronic access to the annual audit and financial report must be made within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period.

Print/Type Name

Jane Wadsworth, State Court Administrator

Print/Type Title


Signature

Date

0-27-09

PRE-HEARING CONFERENCE PROTOCOL

The following protocol is a flexible outline based on a determination of "best practices" and the best interests of children involved in the juvenile court system. This recommended protocol is drafted and approved by the *Through the Eyes of the Child Initiative* Protocol Development Committee.

I. DEFINITION OF A PRE-HEARING CONFERENCE ("PRE-HEARING CONFERENCE"): The PRE-HEARING CONFERENCE is an informal, facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and/or treatment, and to develop a problem-solving atmosphere in the best interest of the child(ren) involved in the juvenile court system.

II. INITIAL PROCEDURES

- ☐ Clerk receives the juvenile petition and notifies parents, attorneys, DHHS, and facilitator of date and time of the PRE-HEARING CONFERENCE. Optional parties may be notified if deemed to be in the best interests of the child(ren).
- ☐ If there are safety issues, arrange for security to be present.
- ☐ Determine whether language interpretation or other special services are needed, and make arrangements as necessary
- ☐ A determination should be made whether the parents need separate attorneys and whether parents can be properly notified before attorneys are appointed. If a valid address or phone number for an absentee parent cannot be found, court appointment of counsel should be postponed to avoid requiring the attorney to advocate for his/her client from an unknown position.

III. GOALS OF CONFERENCE

- A. To move the parties from an adversarial to cooperative role.
- B. Focus on the future, safety and best interest of the child(ren) in a climate of mutual respect.
- C. To clarify placement and visitation options, including possible relative and kinship placements.
- D. To determine if ICWA applies.
- E. Identify family needs and resources early in the case.

ITEMS TO BE DISCUSSED IN CONFERENCE:

- ☐ Placement
- ☐ Visitation
- ☐ Upfront services and/or treatment
- ☐ Allegations as they relate to services
- ☐ Safety plan

IV. FACILITATOR: The facilitator is a trained¹, neutral party who does not serve in any capacity for any party connected with the case. The facilitator should have a basic understanding of juvenile court procedures.

ROLE AND RESPONSIBILITY OF FACILITATOR:

- ☐ Maintain orderly communication
- ☐ Encourage participation of all parties
- ☐ Focus discussion on relevant issues (facilitation not mediation)
- ☐ Deflect personal conflict

TASKS OF THE FACILITATOR

- ☐ Explanation of purpose, process and goals of conference
- ☐ Complete Attendance Sheet
- ☐ Introductions
- ☐ Clarify areas of agreement/disagreement.
- ☐ Monitor time frame
- ☐ Record, or confirm recording of, any agreements regarding placement, visitation, services, or other matters in the best interests of the child(ren)

V. AGENDA

1. IDENTIFY LEGAL PARENTS

- ☐ Current address/phone
- ☐ Paternity issues

2. PRIOR ORDERS IN EFFECT

Are there prior dissolution/custody orders

- ☐ Are there domestic abuse or harassment protection orders
- ☐ Possible agreement to modify for visitation, communications, placement.

3. INDIAN CHILD WELFARE ACT (ICWA)

- ☐ Does ICWA apply?
- ☐ Identify the tribe

4. PLACEMENT OF CHILD

- ☐ Current placement (Return home with safety plan)
- ☐ Relative placement

5. VISITATION

- ☐ Current unsupervised schedule
- ☐ Supervised
- ☐ Semi-Supervised
- ☐ Possible additional visits?
- ☐ Relative visitation

6. SERVICES FOR FAMILY

- ☐ Any service the parents think would be helpful for their children or

themselves (therapy, transportation, housing etc)

☐ Relation to allegations in the petition

☐ Identify possible evaluations that the parents/children would be willing to participate in

1 Best practices include a minimum of mediation training as required by N.R.S. 25-2913 and training in facilitative processes.

☐ Services that have already been identified that would be beneficial for the family

☐ Safety plan

7. INFORMATION ABOUT THE CHILD(REN)

☐ Appointments Dr./ Dental

☐ School needs or events

☐ Medication

☐ Behaviors or special needs

☐ Child's favorite toy, blanket, etc

VI. PARTICIPANTS REQUIRED

☐ Parents/ custodial stepparent/ guardian/ other custodian

☐ Attorneys

☐ GAL

☐ County Attorney

☐ DHHS protection and safety initial assessment worker and/or On-going case Worker

OPTIONAL

☐ Children, if age appropriate

☐ Extended Family

☐ Family Friends

☐ DHHS Supervisor

☐ CASA

☐ Service providers or other advocates

☐ Law enforcement (if necessary for security)

☐ Foster Parents